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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1258

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*,

DISTRICT 91, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *Respondent*.

MOTION OF RESPONDENT DISTRICT 91 TO ADVANCE DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

AND

MEMORANDUM FOR RESPONDENT DISTRICT 91 IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Respondent, District 91, International Association of Machinists and Aerospace Workers, AFL-CIO,[1] re-

[1] District 91 was a party below, having "intervened on the side of the Board" (App. 2a, 3a, 5a), and, pursuant to Rule 21(c) of the Rules of this Court, is therefore a party respondent here. The copy of the petition mailed to counsel for District 91 was misaddressed, returned to the sender, and ultimately hand delivered to his office on January 28, 1971. (App. A, *infra*).

spectfully moves that this Court advance disposition of the petition for writ of certiorari for the following reasons:

On December 23, 1970, at petitioner's request, the court below entered an order staying its mandate pending disposition of the instant petition (Pet. 2). The mandate requires petitioner forthwith to furnish the Local Unions represented by District 91 (App. 3a) a list of the names and addresses of all bargaining unit employees (App. 67a, 20a, 18a). Every day said list is withheld irreparably injures District 91, its local affiliates and the employees they represent, inasmuch as it disables them from properly performing their statutory functions, and thereby frustrates the principal policy and purpose of the entire Act.

As the court below explicitly found (App. 13a), it has been perfectly clear, at least since 1968, that where, as here, the "names and addresses of unit employees [are] needed by the Union to assist it in properly performing its collective bargaining duties," the employer is obligated to furnish such a list upon request. *Standard Oil Company*, 166 NLRB 343-346, enf'd, 389 F. 2d 639, 641 (9 Cir., August 20, 1968). In *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767 (1969), this Court upheld the power of the Board to order "disclosure of employees' names and addresses," for the express purpose of "allowing unions the right of access to employees that management already possesses."

Expedited disposition of this petition is necessary not only in "furtherance of national labor policy" but also because "important considerations of judicial administration are involved." *International Union of E. R. & M. W., AFL-CIO* v. *NLRB*, 426 F. 2d 1243,

1249-1250 (App. D.C.), cert. denied, sub nom. *Fibre Products, Inc. v. Electrical, Radio & Machine Workers*, No. 654, this Term, —— U.S. ——, 39 L.W. 3246. As demonstrated in our annexed memorandum in opposition, the petition for certiorari is plainly frivolous, and yet, unless its denial is expedited, petitioner will have unjustly profited and both respondents and the public interest will have unjustly suffered from substantial delay.

For the foregoing reasons, this motion should be granted.

Respectfully submitted,

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APPENDIX A

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The sole predicate of the petition is its assertion that requiring an employer to furnish names and addresses of bargaining unit employees "is in conflict with the judicial philosophy of this Court" which "does not give the Board a broad charter to attempt to equalize the respective economic powers of labor and management." (Pet. 11, 15, 18-19). The asserted philosophical conflict is plainly non-existent and its invention is a belated afterthought. Petitioner did not even suggest such a theory, or cite any of the cases it now invokes, to the Board or the court below. Even petitioner

concedes that the prohibition against "equalization" of economic weapons involves "a different context" (Pet. 15), than "allowing [bargaining agents] the right of access [to their employee constituents] that management already possesses." *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767. Denial of access is not the use of superior economic power to obtain a better contract; it is withholding information to frustrate performance of the Union's representative functions.

Petitioner necessarily concedes (App. 11-12), that there is only uniformity, not conflict, of decisions. Moreover, even the "question" it would present (Pet. 2-3), turns upon *reversing* findings of fact made by the Trial Examiner, adopted unanimously by the Board, and unanimously affirmed by the distinguished court below. Thus, the court below found (not "summarily" (Pet. 12), as petitioner would have it, but in elaborate detail), that the "alternate methods of Union communication" (Pet. 2), were "individually and collectively inadequate" (Pet. 12; App. 7a-8a, 14a-17a). It held that, *at the crucial time* (which petitioner ignores), petitioner did *not* have "a good faith doubt of the Union's representative status" (cf. Pet. 2, 17, App. 10a-12a). And it held that the ancient "history" petitioner recites (Pet. 2, 4-6, 18) is irrelevant because "there is substantial evidence to support [the] finding" that there is "little likelihood of a clear and present danger to the employees involved" (App. 16a).[1]

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[1] The subsequent opinion on damages in the very state court case petitioner cites belies its present assertion (Pet. 18) (never previously made and wholly unsupported on this record), that no "employee who valued his own or his family's safety [would] publicly testify regarding his * * * fears of union misconduct." *United Aircraft Corp.* v. *Lodge 1746 and 743, District 91, IAM*, 70 LRRM 2577 (Conn. Sup. Ct., 1968).

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied forthwith.

Respectfully submitted,

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